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THOMAS LESTER GOWLEY
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In the Supreme Court of the United States

OCTOBER TERM, 1942.

No. 319.

FIDELITY ASSURANCE ASSOCIATION AND
CENTRAL TRUST COMPANY, TRUSTEE OF
FIDELITY ASSURANCE ASSOCIATION,

Petitioners,

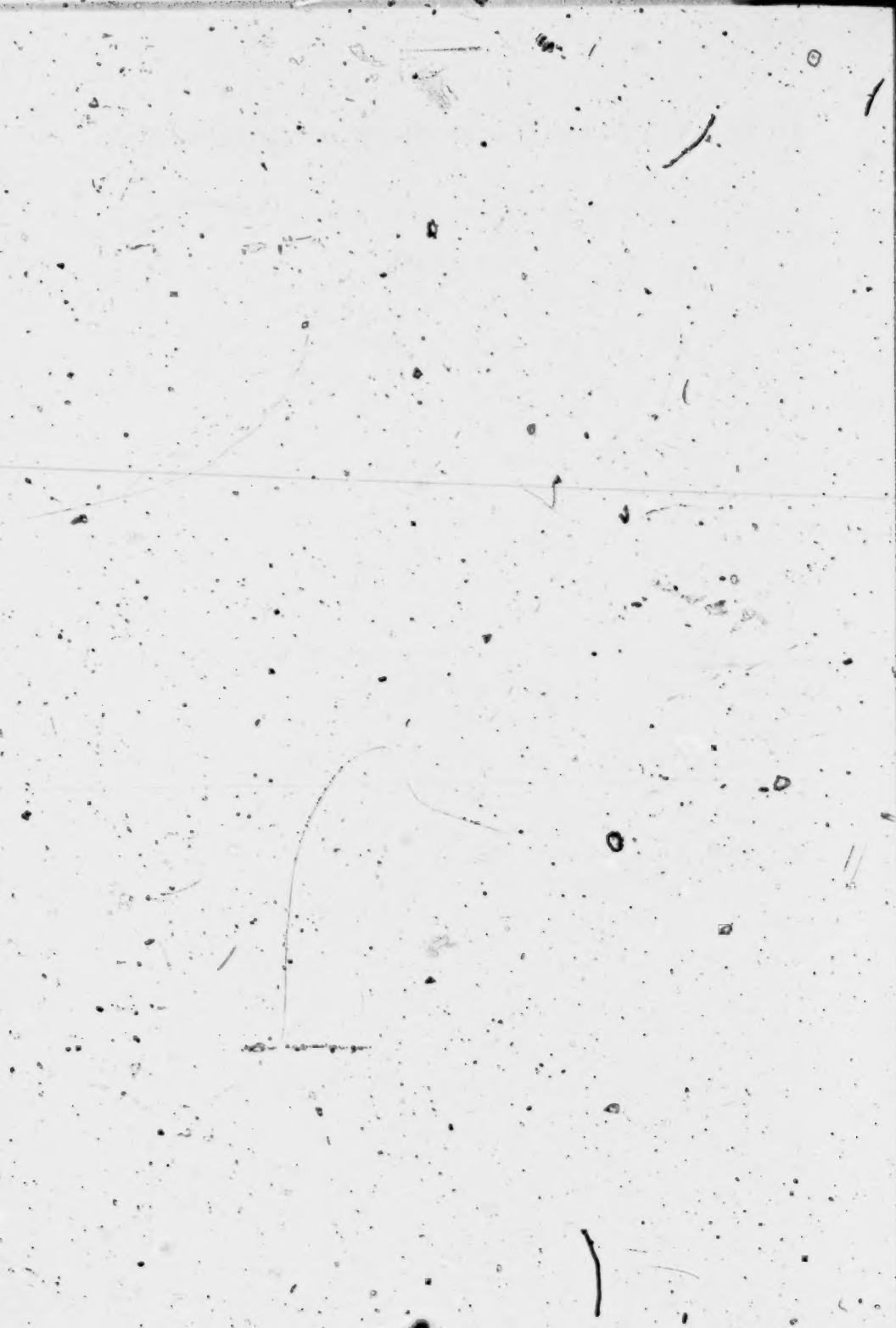
VS.

EDGAR B. SIMS, AUDITOR OF THE STATE
OF WEST VIRGINIA, Etc., et al.,

Respondents.

MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE WITH BRIEF.

DORR E. WARNER,
Hippodrome Bldg., Cleveland, Ohio,
ORLIN F. GOUDY,
Engineers Bldg., Cleveland, Ohio,
*Counsel for Victor Salkeld, et al.,
Amici Curiae.*



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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

Now come Victor Salkeld, *et al.*, creditors of the Debtor, by Dorr E. Warner and Orlin F. Goudy, their counsel, and move the Court to grant leave to file instanter the following brief as amici curiae.

DORR E. WARNER,

1101 Hippodrome Building,
Cleveland, Ohio,

ORLIN F. GOUDY,

Engineers Building,
Cleveland, Ohio,

Counsel for Amici Curiae.

BRIEF OF AMICI CURIAE.

This brief is filed on behalf of those creditors who have no security for the payment of their claims, or whose claims are insufficiently secured. It supports the petition of the Debtor and the Central Trust Company, Trustee of the Debtor (appointed by the United States District Court), for a writ of certiorari to the United States Circuit of Appeals for the Fourth Circuit.

The total number of creditors of the Debtor is about eighty-eight thousand, and its liabilities are about \$23,500,000. The average claim is about \$267.00. The claims fully secured or nearly so aggregate about \$10,500,000. The petition for the writ is opposed by officials for four States and individual contract holders located in one State on behalf of said secured creditors.

The claims of creditors whose claims are unsecured or insufficiently secured aggregate about \$13,000,000 located in forty-three States, the District of Columbia and foreign countries.

The stockholders have no interest in this proceeding because the Debtor's liabilities exceed its assets.

In the lower courts the Debtor and said Trustee sought to protect the best interests of said unsecured creditors, and in this Court they are now seeking to protect their interests. Said contract holders have had no voice in this proceeding from beginning to the end, except that of the Debtor and the said Trustee and attorneys who are friends of the Court.

If there ever was a case that needed the benefit of efficient representation in the courts this is it. The best interests of said unsecured creditors require that the Debtor and said Trustee represent them in this proceeding to the best of their ability. The Debtor and the Trustee would have been derelict in their duty if they had failed to do so.

Accordingly, there is no warrant whatever for the charge made in a brief of appellee that they have represented contract holders with improper motives.

We respectfully submit that this case is of sufficient importance and public interest to warrant this Court in granting a petition for a writ of certiorari for the purpose of making a final determination of—

1. Whether the District Court correctly applied the law in deciding that the Debtor was not an insurance company within the meaning of the Bankruptcy Act, or whether the Court of Appeals correctly applied the law in deciding that it was an insurance company within the meaning of the Bankruptcy Act.
2. Whether the District Court correctly applied the law in deciding that the petition of the Debtor was filed in good faith, or whether the Court of Appeals correctly applied the law in deciding that said petition was not filed in good faith.

Respectfully submitted,

DORR E. WARNER,
ORLIN F. GOUDY,

Counsel for Amici Curiae.

